

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERIE COUNTY ENVIRONMENTAL	)	
COALITION, PENNENVIRONMENT,	)	
INC. and THE GAIA DEFENSE LEAGUE,	)	
Plaintiffs	)	
	)	
v.	)	CIVIL ACTION NO. 05-59 ERIE
	)	ELECTRONICALLY FILED
MILLCREEK TOWNSHIP SEWER	)	
AUTHORITY AND MILLCREEK	)	JUDGE COHILL
TOWNSHIP,	)	
Defendants	)	

**DEFENDANTS' AMENDED MOTION FOR SUMMARY JUDGMENT**

Defendants MILLCREEK TOWNSHIP SEWER AUTHORITY and MILLCREEK TOWNSHIP, by and through their attorneys, MacDonald, Illig, Jones & Britton LLP, file this Defendants' Amended Motion for Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure and LR 56.1 of the Local Civil Rules of the United States District Court for the Western District of Pennsylvania, and states the following in support thereof:

1. Defendants hereby incorporate Paragraphs 1 through 13 of Defendants' Motion for Summary Judgment as if fully set forth herein.

2. In addition to the documents incorporated by reference in Paragraph 5 of Defendants' Motion for Summary Judgment, Defendants support this Amended Motion for Summary Judgment with the following, all of which are incorporated herein by reference:

- (a) Dkt. #39 Responsive Concise Statement of Defendants Millcreek Township Sewer Authority and Millcreek Township;
- (b) Dkt. #40 Appendix to Responsive Concise Statement of Defendants Millcreek Township Sewer Authority and Millcreek Township;
- (c) Dkt. #41 Brief in Opposition to Plaintiffs' Motion for Summary Judgment on All Claims;
- (d) Dkt. #42 Supplemental Affidavit of George W. Riedesel;
- (e) Dkt. #48 Joint Concise Statement of Material Facts Regarding Defendants' Motion for Summary Judgment;
- (f) Dkt. #51 Reply Brief of Defendants Millcreek Township Sewer Authority and Millcreek Township to the Response in Opposition to Defendants' Motion for Summary Judgment;
- (g) Dkt. #51 Exhibits A through E to Reply Brief of Defendants Millcreek Township Sewer Authority and Millcreek Township to the Response in Opposition to Defendants' Motion for Summary Judgment;
- (h) Dkt. #61 Supplement to Brief in Support of Defendants' Motion for Summary Judgment and Brief in Opposition to Plaintiffs' Motion for Summary Judgment;
- (i) Dkt. #62 Supplement to Concise Statement of Material Facts in Support of Motion for Summary Judgment on Behalf of Millcreek Township Sewer Authority and Millcreek Township;
- (j) Dkt. #63 Second Supplemental Affidavit of George W. Riedesel;
- (k) Dkt. #68 Sur-Reply Brief in Response to Supplemental Plaintiffs' Reply to Defendants' Supplemental Brief in Opposition to Plaintiffs' Motion for Summary Judgment;
- (l) Dkt. #69 Third Supplemental Affidavit of George W. Riedesel;
- (m) Dkt. #83 Brief in Support of Defendants' Amended Motion for Summary Judgment, Second Supplement to Brief in Support of Defendants' Motion for Summary Judgment and Brief in Opposition to Plaintiffs' Motion for Summary Judgment;
- (n) Dkt. #86 Second Supplement to Concise Statement of Material Facts in Support of Motion for Summary Judgment on Behalf of Millcreek Township Sewer Authority and Millcreek Township;
- (o) Dkt. #84 Fourth Supplemental Affidavit of George W. Riedesel;

- (p) Dkt. #85 Supplemental Affidavit of Brian P. McGrath; and
- (q) Dkt. #87 First Supplement to Responsive Concise Statement of Defendants Millcreek Township Sewer Authority and Millcreek Township.

3. Plaintiffs' claims for injunctive relief and civil penalties relating to the discharges from the Kearsarge Pump Station are moot as the MTSA and Millcreek have completed projects required by the 2003 COA that ensure that such discharges cannot reasonable be expected to occur at those locations in the future.

WHEREFORE, Defendants Millcreek Township Sewer Authority and Millcreek Township respectfully request this Honorable Court to enter summary judgment in its favor and against Plaintiffs Erie County Environmental Coalition, PennEnvironment, Inc. and the Gaia Defense League. Alternatively, Defendants Millcreek Township Sewer Authority and Millcreek Township respectfully request that this Court grant them Partial Summary Judgment against Plaintiffs Erie County Environmental Coalition, PennEnvironment, Inc. and the Gaia Defense League with respect to the wholly past violations, the claims that have become moot, the claim barred by the statute of limitations and the mandatory injunctive relief sought by the Plaintiffs.

Respectfully submitted,

s / Mark J. Shaw

Mark J. Shaw

PA50763

Robert E. Gandle

PA82524

MacDONALD, ILLIG, JONES & BRITTON LLP

100 State Street, Suite 700

Erie, Pennsylvania 16507-1459

(814) 870-7607

(814) 454-4647 (Facsimile)

mshaw@mjb.com

Attorneys for Defendants

Millcreek Township Sewer Authority

and Millcreek Township

Dated: April 22, 2008

1068978

**CERTIFICATE OF SERVICE**

I hereby certify that on April 22, 2008, the foregoing Defendants' Amended Motion for Summary Judgment was filed electronically with the Clerk of Court using the Electronic Case Filing system. Notice of this filing will be sent to all parties by operation of the Court's ECF system and constitutes service of this filing under Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

s/ Mark J. Shaw

---

Mark J. Shaw

PA 50763

MacDONALD, ILLIG, JONES & BRITTON LLP

100 State Street, Suite 700

Erie, Pennsylvania 16507-1459

(814) 870-7607

(814) 454-4647 (facsimile)

mshaw@mijb.com (e-mail)